STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Judge Gary Larson

Court File No. 27-CV-08-29778

Kevin Williams, Pat Williams,

Plaintiffs,

v.

The National Football League,

Defendant.

**ORDER AND MEMORANDUM OF LAW GRANTING PLAINTIFFS' MOTION TO STAY DISSOLUTION OF TEMPORARY INJUNCTION PENDING APPEAL**

The above-entitled matter came for a hearing before the Honorable Gary Larson, Judge of Hennepin County District Court, on May 6, 2010. Steven Rau, Esq., Peter Ginsberg, Esq., and Christina Burgos, Esq., appeared for and on behalf of Plaintiffs, Kevin and Pat Williams. Joseph Schmitt, Esq., appeared for and on behalf of Defendants, the National Football League.

Based upon all files, records, and proceedings herein, together with the arguments of counsel,

**IT IS HEREBY ORDERED:**

1. Plaintiffs Kevin Williams and Pat Williams' Motion to Stay Dissolution of Temporary Injunction Pending Appeal is **PREMATURE AS THEY HAVE NOT YET FILED A NOTICE OF APPEAL.**

2. If Plaintiffs Williams and Pat Williams timely file a notice of appeal, the Court will grant their motion to stay the Findings of Fact, Conclusions of Law, and Order for Judgment of this Court dated May 6, 2010.

3. The order to stay dissolution of temporary injunction pending appeal will be conditioned upon Plaintiffs posting a supersedeas bond in the amount of $10,000.

4. The attached memorandum is incorporated herein.

BY THE COURT:

Dated: May 21, 2010

Gary Larson
Judge of District Court
C-1655 Government Center
Minneapolis, MN 55487
(612) 348-6102

## MEMORANDUM

## I. INTRODUCTION

On May 6, 2010, this Court issued its Findings of Fact, Conclusions of Law, and Order for Judgment after the matter came before the Court for a trial March 8 - 12, 2010. The parties submitted post-trial briefs and the case was taken under advisement on April 2, 2010.

In its Order, the Court found that the National Football League, ("Defendant"), is Kevin Williams and Pat Williams', ("Plaintiffs"), employer for the purposes of the Drug and Alcohol in the Workplace Act ("DATWA"). The Court also found that Defendant violated DATWA by failing to abide by the Legislature's mandate that employees be given notice of a failed drug test within three days. However, the Court found that Plaintiffs were not damaged by Defendant's DATWA violation in delaying notice of Plaintiffs' positive test results. The Court denied Plaintiffs' request for a permanent injunction and dissolved its temporary injunction.

Plaintiffs have stated their intent to appeal this Court's decision and seek a reinstatement of the temporary injunction pending appeal. Plaintiffs have not, however, filed a notice of appeal or appeal. Plaintiffs instead filed a Motion to Stay Dissolution of Temporary Injunction Pending Appeal with this Court. Defendant opposes the motion.

## II. LEGAL ANALYSIS

### A. Standard of review.

The trial court may continue an injunction in effect pending appeal, notwithstanding the filing of cost and supersedeas bonds. *David N. Volkmann Const., Inc. v. Isaacs*, 428 N.W.2d 875, 876 (Minn. Ct. App. 1988) (citing *State v. Robnan, Inc.*, 107 N.W.2d 51, 53 (Minn. 1960)). If a stay is permitted, the trial court must establish and approve the terms of security to protect the respondent. Minn. R. Civ. P. 62.02, 62.03; *see also* Minn. R. Civ. App. P. 108.01, subd. 1

(trial court must approve amount and form of supersedeas bond), 108.01, subd. 4 (on appeal from decision requiring assignment of documents, supersedeas bond may be waived if documents are deposited with officer appointed by trial court). *David N. Volkmann Const.*, 428 N.W.2d at 876.

According to Minnesota Rules of Civil Appellate Procedure Rule 108.02, subd. 1,

> A party seeking any of the following relief must move first in the trial court: (a) a stay of enforcement of the judgment or order of a trial court pending appeal; (b) approval of the form and amount of security, if any, to be provided in connection with such a stay; or (c) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending pursuant to Minn. R. Civ. P. 62.02.

Minnesota Rule of Civil Procedure 62.02 also provides for the granting of an injunction pending appeal. It states,

> When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Minn. R. Civ. P. 62.02.

When determining whether or not to grant a stay pending appeal, the trial court must balance the appealing party's interest in preserving the status quo, so that effective relief will be available if the appeal succeeds, against the interests of the public or the prevailing party in enforcing the decision and ensuring that they remain "secure in victory" while the appeal is pending. *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 144 (Minn. Ct. App. 2007).

"The party seeking a stay pending appeal must show (1) that it is likely to succeed on the merits; (2) that it will suffer irreparable injury unless the stay is granted; (3) that no substantial harm will come to other interested parties; and (4) that the stay will do no harm to the public

interest." *James River Flood Control Ass'n v. Watt*, 680 F.2d 543, 544 (8th Cir. 1982) (citation omitted); *see Arkansas Peace Ctr. v. Arkansas Dept. of Pollution Control*, 992 F.2d 145, 147 (8th Cir. 1993). "Thus, the factors considered in evaluating [defendant's] motion are virtually identical to those considered in assessing the initial motion for a preliminary injunction." *Metro Networks Commc'ns Ltd. P'ship v. Zavodnick*, No. Civ. 03-6198, 2004 WL 73591, at *3 (D. Minn. Jan. 15, 2004) (citing *United Healthcare Ins. Co. v. AdvancePCS*, Civ. No. 01-2320, 2002 WL 519720, at *1 (D. Minn. Mar. 22, 2002)).

Minnesota Rule of Civil Procedure 62.02 only applies when the party seeking a stay has filed an appeal. Plaintiffs' Motion to Stay Dissolution of Temporary Injunction Pending Appeal is premature because Plaintiffs have not yet filed an appeal or notice of appeal. However, when Plaintiffs file such an appeal, the Court will grant their motion based on the following analysis.

**B. This Court may exercise its discretion to grant a stay.**

In exercising its discretion to grant a stay of dissolution of the temporary restraining order, this Court must balance Plaintiffs' interests in preserving the status quo against Defendant's interest in enforcing discipline against Plaintiffs. The Court must determine if Plaintiffs are likely to succeed on the merits, will suffer irreparable injury unless the stay is granted, if substantial harm will come to other interested parties, and whether the stay will harm the public interest. Each factor is discussed below.

***1. Plaintiffs are likely to succeed on the merits.***

Plaintiffs have a likelihood of success on the merits. Plaintiffs have the burden on appeal to prove that the trial court made an error of fact or law. *Graffius v. Control Data Corp.*, 447 N.W.2d 215, 216 (Minn. Ct. App. 1989). Typically, the likelihood of success on the merits is the most significant factor. *S & M Constructors, Inc. v. Foley Co.*, 959 F.2d 97, 98 (8th Cir. 1992).

In order to satisfy the "likelihood of success" factor, the moving party does not have to establish "'absolute certainty of success,'" but only "that they are 'likely' to succeed on the merits." *Iowa Utils. Bd. v. F.C.C.*, 109 F.3d 418, 423 (8th Cir. 1996) (quoting *Population Inst. v. McPherson*, 797 F.2d 1062, 1078 (D.C. Cir. 1986)). Further, to prove that it is likely to succeed on the merits on appeal, a party does not need to prove that there is a greater than fifty-percent chance that it will prevail on the merits. *Knutson v. AG Processing, Inc.*, 302 F.Supp.2d 1023, 1035 (N.D. Iowa 2004) (citing *Dataphase Sys. Inc. v. C L Sys. Inc.*, 640 F.2d 109, 113 (8th Cir. 1981). "[A]t a minimum, the movant is required to show 'serious questions going to the merits.'" *Id.* (quoting *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir. 1985)).

The DATWA issues facing this Court were a matter of first impression. There is no case law that was able to guide this Court. It was assumed, throughout this case, that the Court's decision would be appealed by one or both parties. The Court found that Defendant violated Plaintiffs' rights under DATWA by failing to give notice of Plaintiffs' test results within three days. However, this Court also found that Plaintiffs were not harmed by Defendant's DATWA violation.

An employee, whose rights were violated under DATWA, is entitled to damages and other equitable relief, including ordering that the injured employee be reinstated. Minn. Stat. § 181.956. "In addition to any other remedies provided by law, an employer or laboratory that violates sections 181.950 to 181.954 is liable to an *employee or job applicant injured by the violation* in a civil action for any damages allowable at law." Minn. Stat. § 181.956 (emphasis added). The Court found that Plaintiffs were not injured by Defendant's violation based on Plaintiffs' own testimony.

Public policy, however, dictates that Defendant should not be permitted to benefit from its own misconduct. *See, e.g., Ganley Bros. v. Butler Bros. Bldg. Co.,* 212 N.W. 602, 603 (Minn. 1927) (refusing to enforce, based on public policy, a party's attempt to escape his own fraud); *Yates v. Hanna Min. Co., Inc.*, 365 N.W.2d 783, 787 (Minn. Ct. App. 1985) (finding that a contract which purported to delegate an employer's obligation to provide a safe environment for employees was ineffective to shield the employer from his own negligence). Here, Defendant knew Star Caps contained Bumetanide, that players were ingesting Bumetanide, that Bumetanide was dangerous, and withheld information about Star Caps, knowing that players would suffer as a result. Defendant created a trap that it knew would result in violations of the program.

Violations of public policy and violations of statutes are inextricably linked because statutes are one way in which states set forth their public policy. "Public policy, where the legislature has spoken, is what it has declared that policy to be. So far as the question of policy is concerned, [the] statute settles the matter." *Thompson v. Allstate Ins. Co.*, 412 N.W.2d 386, 388-89 (Minn. Ct. App. 1987). This case presents pressing issues of an important state law designed to protect employees. Guidance in the consistent application of DATWA is needed, and Plaintiffs' may prevail on appeal. This Court has no delusions of grandeur and has had on previous occasions been reversed by the Court of Appeals and Supreme Court.

Regardless of Plaintiffs' likelihood of success on the merits, the Court must consider the other factors in granting a stay. "The court need not, however, address the merits of the parties' respective positions because the court finds that all three of the remaining factors weigh decisively in favor of [the stay]." *Twin Cities Galleries, LLC v. Media Arts Group, Inc.*, 431 F.Supp.2d 980, 983 (D. Minn. 2006) (citing *Watt*, *680* F.2d at 544). Because the other factors

weigh heavily in Plaintiffs' favor, their likelihood of success on the merits is not determinative of whether the Court should stay the dissolution of the temporary restraining order.

***2. Plaintiffs will suffer irreparable harm unless the stay is granted.***

Plaintiffs will suffer irreparable harm if they are suspended before the appeal process is exhausted. The United States Supreme Court stated that a professional basketball player would suffer irreparable injury if he could not continue playing because a significant part of his career "will have been dissipated, his physical condition, skills and coordination will deteriorate from lack of high-level competition, his public acceptance as a super star will diminish to the detriment of his career, his self-esteem and pride will have been injured and a great injustice will be perpetrated on him." *Haywood v. Nat'l Basketball Ass'n*, 401 U.S. 1204, 1205 (1971).

Courts have found that loss of NFL playing time is also sufficient to constitute irreparable harm. *See Jackson, et. al. v. Nat'l Football League*, 802 F.Supp. 226, 231 (D. Minn. 1992) (finding that "[t]he existence of irreparable injury is underscored by the undisputed brevity and precariousness of the players' careers in professional sports, particularly in the NFL"); *Bowman v. Natl'l Football League*, 402 F.Supp. 754, 756 (D. Minn. 1975) (stating that, without injunctive relief, a professional football player would "suffer irreparable harm, not compensable in terms of damages, and that the court's capacity to do justice will thereby be rendered futile"); *Denver Rockets v. All-Pro Mgmt., Inc.*, 325 F.Supp. 1049, 1057 (C.D. Cal. 1971) (stating that the professional basketball player will suffer greater harm than that of the NBA).

In this case, because the NFL playing season is relatively short, Plaintiffs would suffer a significant loss of playing time without the benefit of a stay. The loss of four games is considerable, given the relatively short season for professional football and the limited number of years remaining in Plaintiffs' football careers. Plaintiffs' ability to make the Pro Bowl and,

ultimately have a fair opportunity for the Hall of Fame will be jeopardized if they are suspended. Moreover, Plaintiffs' reputations and standing in the community will be forever compromised.

The Court is satisfied that Plaintiffs would suffer irreparable harm absent a stay of the dissolution of the injunction.

***3. No substantial harm will come to the NFL.***

The NFL will not be substantially harmed by a stay of dissolution of the temporary restraining order pending appeal. Defendant argues that it will suffer irreparable harm. Defendant claims that granting a stay pending appeal would send the wrong message to young fans and skew the competition. Defendants also argue that a stay would pose a disadvantage to other players who attained their playing weight without using banned substances, as well as other teams whose players already served their suspensions for using Bumetanide or other prohibited substances.

Defendant could have easily avoided this very situation by informing players or teams about what it already knew – that Star Caps contained a hidden, dangerous substance. Defendant knew that many players were already inadvertently ingesting Bumetanide, and continued to place the health, safety, and welfare of its players in jeopardy, so that Adolpho Birch could play a game of gotcha. The league clearly allowed a half dozen other players to use Bumetanide without punishment. Granting a stay pending appeal would not cause Defendant irreparable harm, it would only affect Defendant's ability to immediately sanction Plaintiffs and would not affect the general enforceability its anti-doping policy. This Court finds that Defendant would suffer no harm by the continued imposition of an injunction during appeal.

#### *4. Granting the stay will not harm public interest.*

Granting a stay of dissolution of the temporary restraining order will benefit public interests. DATWA is a statute reflecting the public policy of the State of Minnesota. *Nat'l Football League Players Ass'n v. Nat'l Football League*, Civ. No. 08-6254, 2009 WL 1457007, at *10 (D. Minn. May 22, 2009). "Public policy, where the legislature has spoken, is what it has declared that policy to be. So far as the question of policy is concerned, [the] statute settles the matter." *Thompson v. Allstate Ins. Co.*, 412 N.W.2d 386, 388-89 (Minn. Ct. App. 1987). Entering a stay pending appeal will allow the Minnesota Court of Appeals or the Supreme Court to review the case on the merits and ensure that the legislative will and public policy is served as best as possible.

The Court has balanced the factors under *DRJ*, 741 N.W.2d 141 and *Watt*, 680 F.2d 543. It is clear that Plaintiffs will suffer irreparable injury unless the stay is granted, that no substantial harm will come to Defendant, and that the stay will do no harm to the public interest. In sum, the Court concludes that these factors clearly support granting Plaintiffs' Motion to Stay Dissolution of Temporary Injunction Pending Appeal. After Plaintiffs file a notice of appeal, the Court will grant their motion.

### C. The stay is conditioned upon Plaintiffs posting a supersedeas bond.

The trial court has a large degree of discretion regarding the issuance of a stay and the conditions under which a stay is granted. *See, Matson v. Matson*, 310 N.W.2d 502 (Minn. 1981). The amount of security required for a stay is ultimately a matter for the Court's discretion. *See, e.g., No Power Line Inc., v. Minn. Envtl. Quality Council*, 262 N.W.2d 312, 331-32 (Minn. 1977) (explaining that an unsecured stay should be granted only in rare circumstances).

The Court, therefore, sets a supersedeas bond in the amount of $10,000. A stay of dissolution of the temporary injunction pending appeal will be entered and in effect until appellate review in this matter is exhausted. Plaintiffs are required to post a supersedeas bond in the amount of $10,000.

## III. CONCLUSION

Plaintiffs have not yet filed an appeal or a notice of appeal. As such, their Motion to Stay Dissolution of Temporary Injunction Pending Appeal is premature. Assuming that Plaintiffs file an appeal, this Court has the discretion to grant a stay. Plaintiffs have shown some likelihood of success on the merits. More importantly, Plaintiffs have amply demonstrated that they would suffer irreparable injury unless the stay is granted, that Defendant will not be substantially harmed, and that the stay will not harm the public interest. Based on these factors, the stay of dissolution of the temporary injunction should be granted. After Plaintiffs file their notice of appeal and post a supersedeas bond in the amount of $10,000, the Court will grant their motion.